IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRIMINAL APPEAL NO.703 SB OF 1995

DATE OF DECISION: MARCH 20, 2007

Surinder Singh @ Chhinda.

.....Appellant

VERSUS

State of Punjab.

....Respondent

CORAM:- HON'BLE MR.JUSTICE RANJIT SINGH

1. **Whether Reporters of local papers may be allowed to see the judgement?**
2. **To be referred to the Reporters or not?**
3. **Whether the judgment should be reported in the Digest?**

PRESENT: Mr. J. B. S. Gill, Advocate,
for the appellant.

Mr. M. C. Berry, Sr.DAG, Punjab,
for the State.

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RANJIT SINGH, J.

Smt.Salochna, mother of the prosecutrix, Asha Rani, an innocent villager left her daughter at Dera headed by Surinder Singh @ Chhinda to get her cured of the evil effects. Taking advantage of innocence and his position of dominance, Surinder Singh @ Chhinda raped prosecutrix, Asha Rani, while she was staying with him at Dera. On a complaint lodged against appellant Surinder Singh and his co-accused, they were prosecuted for offences under Sections 376/34 and 506 IPC. Upon his conviction, the appellant was sentenced to suffer RI for 10 years under Section 376 IPC and RI for one year for an offence under Section 506 IPC. He is in appeal against his conviction and award of said

sentence.

On 28.10.1994, prosecutrix Asha Rani was left at Dera of the appellant by her mother. The appellant assured the innocent lady that he will cure her daughter of all evil effects. At that time, four other ladies from the village were also present alongwith cousin brother of the prosecutrix. All left Dera, leaving prosecutrix in the care and custody of the appellant. Prosecutrix Asha Rani was asked to take rest near a fire place at the Dera. Around mid-night, the appellant accompanied by three other persons came and lifted the prosecutrix to take her to a mango garden nearby. First the appellant committed rape on her while the remaining accused held her from her arms and legs. Thereafter, the remaining three accused also committed rape on the prosecutrix turn by turn. Even on next day, she was neither allowed to come out of the Dera or to meet her mother, who had statedly come to the Dera. On the following night, the act was repeated at the same place by all the accused. Third day, Nonee son of the Sarpanch of the Village, where the prosecutrix was residing, came to the Dera, when she asked him to take her to village. She, however, did not disclose the occurrence to him but mentioned the entire details of her fate to her parents and the neighbours who had collected at their house. The incident was also narrated to Narotam Singh, Sarpanch, leading to registration of an FIR on a statement made by prosecutrix before SI Ram Singh. Investigation followed, leading to appellant and other accused being charged for offences under Sections 376, 506, 34 IPC.

In support of its case, the prosecution examined prosecutrix, her mother Salochna, Nonee, Chaman Lal, Sarpanch,

Narotam Singh and Dr.Reeta Dhami besides the police official witnesses.

The appellant, in his defence, pleaded innocence and claimed that he has been booked in this case because of popularity of his Dera. As per the defence, the women folk from nearby villages were visiting Dera to pay obeisance, which was not to the liking of the men folk and in order to defame him, Narotam Singh entered into a conspiracy with the prosecutrix and had involved him in this false case as he did not meet the demand of Rs.2 lacs as raised by him. The remaining accused pleaded innocence by saying that they have been involved simply because they were followers of Surinder Singh @ Chhinda. The trial Court found that prosecution succeeded in proving the case against Surinder Singh @ Chhinda and he was accordingly convicted but it had not succeeded in proving the case against remaining accused beyond doubt and they were, thus, acquitted of the charges levelled against them. Surinder Singh @ Chhinda has filed this appeal against his order of conviction and sentence.

Learned counsel appearing for the appellant has mainly submitted that the appellant was falsely implicated because of rivalry between two Deras. He would also submit that it will be highly doubtful to believe that mother would leave a young daughter at the Dera and would not come back to know about her fate. Counsel had also made reference to the medical evidence to say that there may be a doubt in regard to sexual inter-course by four persons.

On the other hand, learned State counsel referred to the statement of prosecutrix to say that her version alone would be

sufficient to bring home the guilt against the appellant.

I have considered the rival submissions made before me.

The assertion of the defence that the appellant is falsely implicated because of rivalry between two Deras or due to popularity of Dera etc. is too far fetched to be believed. It cannot be expected from an innocent villager to be scheming in the manner as being suggested. Whatever may be the situation, innocent and rustic villagers would not go to the extent of defaming their unmarried daughter only for the purpose of connivance to falsely implicate a person. They were bound to realise that in the bargain the honour and prestige of the family and that of the unmarried daughter was at stake. Even otherwise, this submission of the defence is a bald assertion made in the case without substantiating with any proof. I am inclined to agree with the observation of the trial Court that state of Indian society and the people living in the villages are still regulated by the belief of effect of evil spirits and its cure by Deras as was headed by the appellant. The innocence of the villagers is being regularly exploited by persons like the appellant. In an unguarded moment, the appellant appears to have come out with the truthful account relating to visit of ladies to the Dera. His defence, as projected and noticed above, was that men folk were not relishing the visit of the ladies to Dera, which would be sufficient to construe that ladies were visiting this Dera and as such, the prosecutrix also could have been left at the Dera in all innocence. The evidence of prosecutrix PW2 would show that she has given a graphic account in the manner in which the appellant had committed rape on her and the role played by the other co-accused. She has also testified that

her mother had come to the Dera on the following day but she was not allowed to meet her. This will also meet the submission raised by the defence that the mother of the prosecutrix could not be expected to leave her at the Dera and then not come back to know her welfare. Indeed, she came to the Dera on the following day but still was not allowed to meet. The prosecutrix was raped on the following night also and was not allowed to raise alarm. Her version is duly supported by the medical evidence given by Dr.Reeta Dhami (PW1), when she testified that possibility of a rape cannot be ruled out in the present circumstances. Nothing much can be made out from the fact that PW1 did not find any injury, bruises, swelling etc. on the genitalia of the prosecutrix. During her cross-examination, PW1 clearly stated that in a case of rape, it is not necessary that there will be injuries on the private parts or on any other part of the body. As per the chemical report, Ex.PB, semen was found on Exhibit II i.e. vaginal discharge slide. On the basis of this finding, it was opined that intercourse had been done in this case. This evidence would be sufficient to lend full support to the oral account of rape given by the prosecutrix. In this background, the other variations or improvements, even if any in the prosecution story, would pale into insignificance.

Learned counsel for the appellant then tried to make capital out of the acquittal of three co-accused. They seems to have escaped the wrath of law, only on account of delay in lodging the FIR, which, in my opinion, was sufficiently explained. The prosecutrix, in her first statement before the police, had only named present appellant and not the remaining accused, which obviously can easily be explained. She could be expected to know the name of the

appellant as she was left with him being a saint but may not have known the remaining accused and hence, sufficient reason on her part not to name the remaining accused. The names of these accused, as per the record, were obtained during the investigation of the appellant. Taking this fact into consideration, the Court came to conclude that the co-accused of the appellant were not named by the prosecutrix and they were given benefit of doubt. They appears to have escaped the rigors of law only because of some infirm investigation in this case. Had the police been a bit vigilant to get the identification done of these accused, they perhaps would have also been cooling their heals with the present appellant. On that count, no advantage is either due or can accrue to the appellant. I do not find any infirmity in the order passed by the trial Court. The conviction of the appellant is supported by reliable and cogent evidence. Accordingly, I would not have any hesitation in dismissing the present appeal. Otherwise also, the appellant would not deserve any sympathy. He has betrayed the faith of the innocent villagers and had ravished an unmarried innocent young girl, who was left to the care of the appellant, considering him to be a saint. Such persons are real danger to the society and would not deserve any sympathy of any one much less of a Court of law. I would accordingly up-hold the sentence of 10 years RI awarded to the appellant.

In view of the above discussion, the appeal is dismissed.

March 20, 2007 **(RANJIT SINGH)**
khurmi **JUDGE**